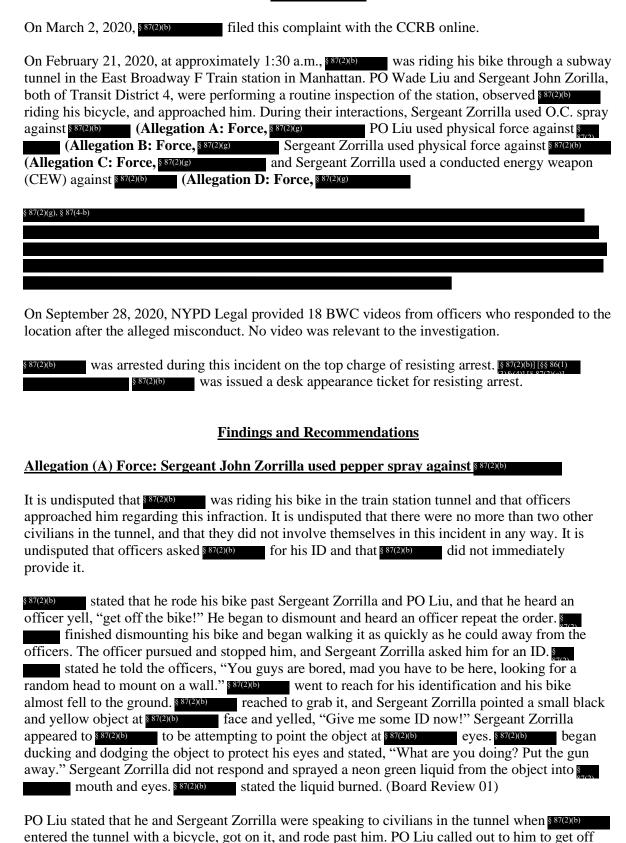
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☑	Force		Discourt	U.S.
Chris Olmsted		Squad #09	202001757		Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			18 N	Ao. SC	OL.	Precinct:
Friday, 02/21/2020 1:30 AM		F Train Station at East Broadway			4/7/2022		07	
Date/Time CV Reported		CV Reported At: How CV Reported		:	Date/Time Received at CCRI			RB
Mon, 03/02/2020 7:05 PM		CCRB	On-line website		Mon, 03/	02/202	0 7:05 PN	Л
Complainant/Victim	Туре	Home Addre	ess					
Witness(es) Home Address								
Subject Officer(s)	Shield	TaxID	Command					
1. POM Wade Liu	07774	958824	TB DT04					
2. SGT John Zorrilla	03069	933511	TB DT04					
Officer(s)	Allegatio	on			Inv	estiga	tor Reco	mmendation
A . SGT John Zorrilla	Force: Sergeant John Zorrilla used pepper spray against \$87(2)(b)							
B . POM Wade Liu	Force: Police Officer Wade Liu used physical force against							
C . SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against							
D . SGT John Zorrilla	Force: Sergeant John Zorrilla used a taser against § 87(2)(b)							
§ 87(2)(g), § 87(4-b)								

Case Summary



CCRB Case # 202001757

the bike, and \$87(2)(b) and stopped approximately two feet from the front bike tire. Sergeant Zorrilla did not approach the pair, remaining instead with the civilians farther down the tunnel. PO Liu ordered \$87(2)(b) to get off of his bike and told him that riding a bicycle inside a station is a violation. \$87(2)(b) did not get off his bike and stated that he rode his bike through the station every day. \$87(2)(b) stated he had done nothing wrong and challenged why he was stopped. PO Liu stated that \$87(2)(b) had to get off the bike or he would get a summons. \$87(2)(b) refused to get off his bike. As the conversation continued, \$87(2)(b) voice grew louder. He got off his bike and stood with his hands on the body of the bike with the bike between himself and PO Liu. He appeared to PO Liu to be tensing his muscles.

PO Liu decided to issue \$\frac{87(2)(b)}{2}\$ a summons and asked for \$\frac{87(2)(b)}{2}\$ ID. \$\frac{87(2)(b)}{2}\$ refused to provide an ID. PO Liu asked again for \$\frac{87(2)(b)}{2}\$ ID. Sergeant Zorrilla approached PO Liu and took his O.C. spray from his belt, and sprayed \$\frac{87(2)(b)}{2}\$ in the face. He did not speak with \$\frac{87(2)(b)}{2}\$ beforehand. He did not warn \$\frac{87(2)(b)}{2}\$ or PO Liu that he intended to use O.C. spray. PO Liu stated he had not yet advised \$\frac{87(2)(b)}{2}\$ that failing to produce an ID would result in his arrest. (Board Review 02)

Sergeant Zorrilla denied using O.C. spray at this point in the interaction with \$87(2)(b) He stated he used O.C. spray against during the incident, but that he had done so only one time and it was after he and PO Liu had physically struggled with \$87(2)(b) for three to four minutes while attempting to take \$87(2)(b) into custody. (Board Review 03)

Threat, Resistance and Injury Report prepared by Sergeant Zorrilla for this incident states, "At TPO, defendant was riding on his bicycle inside East Broadway train station and refused to get off his bake and show any forms or types of identification when officers approached him. Defendant was very aggressive and got into a fighting stance. Sergeant deployed his O.C. spray and the defendant dropped to the floor." (Board Review 04)

<u>Patrol Guide Procedure 221-01</u> states, "All members of the service at a police incident must use reasonable force, employ less lethal alternatives, and prioritize de-escalation, whenever possible. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy.

When appropriate and consistent with personal safety, members of the service will use deescalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death.

In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight

- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence. (Board Review 05)

<u>Patrol Guide Procedure 221-02</u> states, "When a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with P.G. 221-01, "Force Guidelines" and:

- 2. Utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, and increase the likelihood of gaining the subject's voluntary compliance.
- 10.c If the use of de-escalation and conflict negotiation techniques fail to persuade an uncooperative subject to cooperate, the supervisor/members of the service present should, if appropriate and consistent with officer safety: Advise the offender that physical force or other devices (e.g., O.C. pepper spray, shield, baton/asp, etc.) will be used to handcuff/restrain him/her before applying such force, if appropriate.
- 11. Apply no more than the reasonable force necessary to gain control." (Board Review 06)

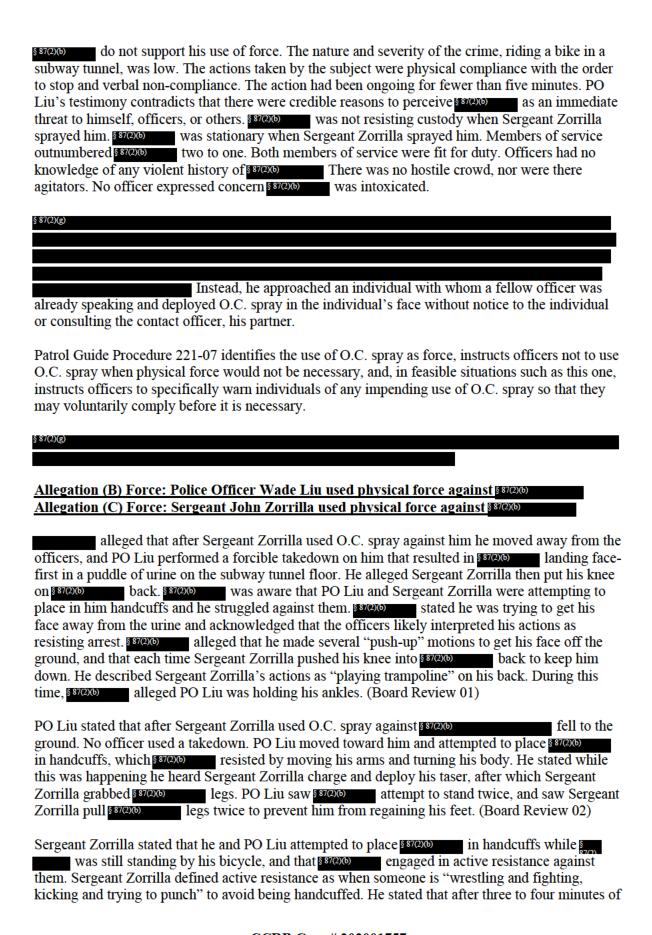
Patrol Guide Procedure 221-07 states, "Use of O.C. pepper spray constitutes physical force under the New York State Penal Law. Use of O.C. pepper spray is proper when used in accordance with Article 35 of the Penal Law and Department procedures. O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force."

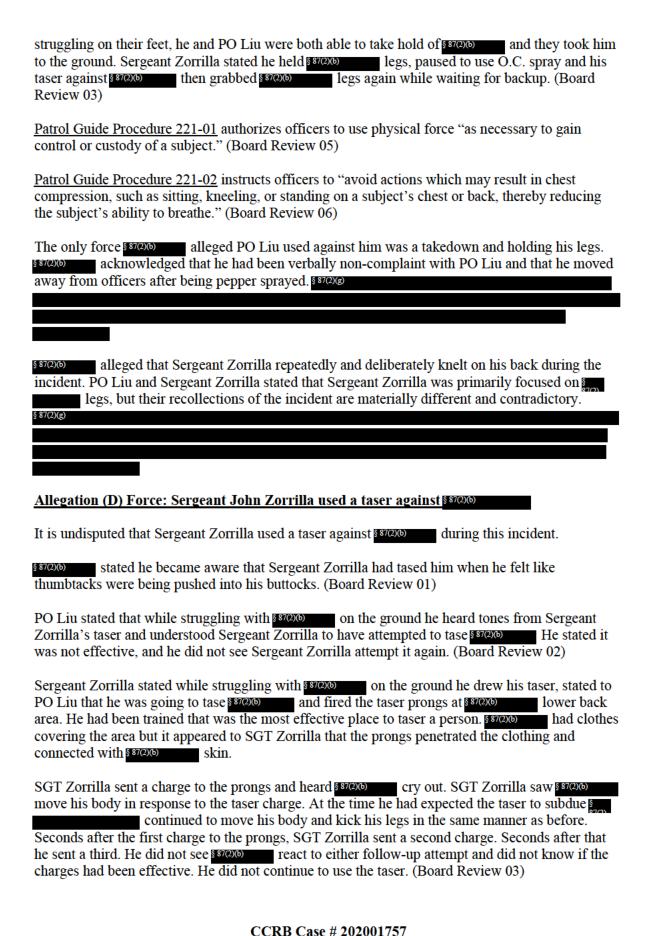
It further states, "In an effort to gain voluntary compliance, members of the service should advise the offender that O.C. pepper spray will be used to handcuff/restrain him/her before applying such force, if feasible." (Board Review 07)

Sergeant Zorrilla's testimony about his use of force is contradicted by \$87(2)(b) testimony, by PO Liu's testimony, and by his own statements on the TRI he prepared for the incident. Therefore, the CCRB credits that Sergeant Zorrilla used O.C. spray on \$87(2)(b) while \$87(2)(b) was standing with his bicycle, before any other attempt to take \$87(2)(b) into custody or use physical force against him, and without advising \$87(2)(b) he would use O.C. spray in a situation where doing so was feasible.

Sergeant Zorrilla's TRI for this incident stated that he used O.C. spray on \$87(2)(b) after \$7(2)
got into "a fighting stance." PO Liu stated that while \$87(2)(6) appeared to tense his
muscles, he kept his hands on his bicycle. Neither the TRI nor PO Liu alleged that \$87(2)(b)
attempted to fight an officer. According to PO Liu's testimony, he was both several feet from
and still in dialogue with him when Sergeant Zorrilla approached and used O.C. spray.

The factors Patrol Guide 221-01 requires Sergeant Zorrilla to have considered before using force on





Threat, Resistance and Injury Report prepared by Sergeant Zorrilla for this incident states, "while attempting to place him in cuffs, defendant started resisting by flailing his arms and kicking. Sgt deployed his taser to gain compliance but defendant continued to resist. Sgt did then deploy taser to subject's lower back, two consecutive cycles. One prong struck the subject in the lower back and Sgt was able to gain compliance." (Board Review 04)

The Taser Information sheet for Sergeant Zorrilla's taser shows that during the incident Sergant Zorrilla drew and armed his taser, waited 40 seconds, and disarmed it without firing. 80 seconds later he re-armed his taser. SGT Zorrilla sent three consecutive 5-second charges, waited three seconds, sent another 5-second charge, waited ten seconds, sent a fifth 5-second charge, waited 35 seconds, and sent a sixth 5-second charge. The log shows the taser was conductive, recording its charged pre-deployment temperature as 24 degrees Celsius and its post-deployment temperature at 31 degrees Celsius. (Board Review 08)

<u>Patrol Guide Procedure 221-08</u> states, "members should use a CEW for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary. Members should consider that exposure to the CEW for longer than fifteen seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. All applications must be independently justifiable, and the risks should be weighed against other force options." (Board Review 09)

Sergeant Zorrilla stated on the TRI he prepared for this incident that he deployed his taser, observed continuing to resist, and deployed it two more times and was able to gain compliance. Sergeant Zorrilla stated to the CCRB that he deployed his taser, observed continuing to resist, deployed it two more times, observed no effect on street and stopped using the taser.

Sergeant Zorrilla's taser log shows that zero seconds passed between the end of Sergeant Zorrilla's first five-second charge and the beginning of his second five-second charge, and only one second passed between the end of Sergeant Zorrilla's second five-second charge and the beginning of his third. The log refutes that there was time for Sergeant Zorrilla to consider the impact of his first charge before he sent the second, much less the third.

Furthermore, although Sergeant Zorrilla stated on his NYPD documentation and to the CCRB that he sent a total of three charges during the incident, the taser log shows that he fired three additional five second charges after his initial, consecutive 15 seconds of charge over the course of the next three minutes.

Patrol Guide Procedure 221-08 states members should evaluate the need for a taser after one five second charge, advises them that more than fifteen seconds of exposure to taser charges, including multiple non-consecutive charges, endangers the subject, and requires each individual charge to be independently justifiable. Sergeant Zorrilla fired three consecutive charges without time to consider the impact, fired an additional three charges for a total time double the maximum safe exposure, and the taser log indicates all six charges were live.

§ 87(2)(g), § 87(4-b)	-

§ 87(2)(g), § 87(4-b)			
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	Civilian and C	Officer CCRB Histories	
 Serg other PO 1 	neant Zorrilla has been a member of CCRB complaints with 25 other complaints with 25 other 201507072 involved a substance against Sergeant Zorrilla. The NYPD imposed no penalty. 201509988 involved substance of Authority – Retaliatory Arrecommended Command Discipline B. Sergeant Zorrilla's CCRB his Spray, one of which was substance.	e for 5 years and is a subject in one	een a subject in nine substantiated. Athority - Other Discipline B and the er Spray and Abuse e board I Command ons of Force -Pepper
	Mediation, Ci	ivil and Criminal Histories	
• This	case was not suitable for mediat	ion.	
• [§ 87(2)	(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]		
	Tune 30, 2021, the NYC Comptro m related to this incident.(Board I	oller's Office FOIL Unit stated the Review 11)	y found no notices of
Squad No.:	<u>09</u>		
Investigator:	Christopher Olmsted Signature	Investigator Chris Olmsted Print Title & Name	June 25, 2021 Date
Squad Leade	er: Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date